



**City of McMinnville**  
**Planning Department**  
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## **EXHIBIT 2 - STAFF REPORT**

**DATE:** July 15, 2021  
**TO:** Planning Commission Members  
**FROM:** Tom Schauer, Senior Planner  
**SUBJECT:** Variance application (VR 2-21) to allow more than 3 lots to be accessed by a private easement

### **STRATEGIC PRIORITY & GOAL:**



### **GROWTH & DEVELOPMENT CHARACTER**

Guide growth & development strategically, responsibly & responsibly to enhance our unique character.

**OBJECTIVE/S:** Strategically plan for short and long-term growth and development that will create enduring value for the community

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### **Report in Brief:**

This proceeding is a continuance of a quasi-judicial public hearing of the Planning Commission to consider an application for a variance to the number of lots allowed to be accessed via private easement, per Section 17.53.100(C), "Creation of Streets", of the McMinnville Municipal Code (MMC) which states that:

*Section 17.53.100(C), MMC:*

*An easement providing access to property and which is created to allow the partitioning of land for the purpose of lease, transfer of ownership, or building development, whether immediate or future, shall be in the form of a street in a subdivision, except that a private easement to be established by deed without full compliance with these regulations may be approved by the Planning Director under the following conditions:*

- 1. If it is the only reasonable method by which the rear portion of a lot being unusually deep or having an unusual configuration that is large enough to warrant partitioning into two more new parcels, i.e., a total of not more than three (3) parcels including the original may then exist, that may be provided with access and said access shall be not less than 15 (fifteen) feet in width and shall have a hard surfaced drive of 10 (ten) feet width minimum;*
- 2. The Planning Director shall require the applicant to provide for the improvement and maintenance of said access way, and to file an easement for said access way which includes the right to passage and the installation of utilities. Such requirements shall be submitted to and approved by the City Attorney.*
- 3. Access easements shall be the preferred form of providing access to the rear lots created by partition if the alternative is the creation of a flag lot.*

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Attachments:  
Decision Document – VR 2-21

The applicant would like to submit a future partition of the subject property allowing two existing commercial structures in a commercial complex to be on their own lots, which would result in four lots utilizing a private access easement. The subject site is located at 2185/2191 NW 2<sup>nd</sup> Street (Parcel 1 of Partition Plat 2005-06; Tax Lot 502, Section 19AC, T. 4 S., R. 4 W., W.M.).

The Planning Commission will make a final decision on the application. A final decision of the Planning Commission may be appealed to the City Council as provided in Section 17.72.180 of the Zoning Ordinance. The Planning Commission hearing is conducted in accordance with quasi-judicial hearing procedures, and the application is subject to the 120-day processing timeline.

**Background:**

Section 17.74.100 and 17.74.110 of the MMC provide the criteria and process for which a Planning Commission can review and grant a variance to the city's development code.

*17.74.100 Variance-Planning Commission Authority. The Planning Commission may authorize variances from the requirements of this title where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, strict application of this title would cause an undue or unnecessary hardship, except that no variance shall be granted to allow the use of property for a purpose not authorized within the zone in which the proposed use would be located. In granting a variance, the Planning Commission may attach conditions which it finds necessary to protect the best interests of the surrounding property or neighborhood and otherwise achieve the purposes of this title.*

*17.74.110 Conditions for Granting Variance. A variance may be granted only in the event that the following circumstances substantially exist:*

- A. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape legally existing prior to the date of the ordinance codified in this title, topography, or other circumstance over which the applicant has no control;*
- B. The variance is necessary for the preservation of a property right of the applicant substantially the same as owners of other property in the same zone or vicinity possess;*
- C. The variance would not be materially detrimental to the purposes of this title, or to property in the zone or vicinity in which the property is located, or otherwise conflict with the objectives of any city plan or policy;*
- D. The variance requested is the minimum variance which would alleviate the hardship.*

In the June 17, 2021 staff report, staff recommended a continuance as requested by the applicant. In the draft decision document, staff found that the applicant had not submitted information sufficient to meet the burden of proof regarding two criteria to demonstrate that those two criteria were satisfied. Staff found that the other criteria were satisfied or not applicable. The applicant has since submitted additional information in response to these criteria.

Specifically, the applicant did not provide a response to the first criterion in Section 17.74.100. As a result, staff found the applicant had not met the burden of proof regarding this criterion:

**Section 17.74.100:**

***Owing to special and unusual circumstances related to a specific piece of property, strict application of this title would cause an undue or unnecessary hardship.***

**APPLICANT’S RESPONSE:** (N/A)

**FINDING: NOT SATISFIED.** As described in more detail in the finding below for 17.74.110(A) the applicant has not provided sufficient evidence that special and unusual circumstances exist for the subject site.

Second, while the applicant provided a response to criterion 17.74.110(A), staff found that the response did not sufficiently address the criterion, and staff found that the applicant did not demonstrate that the criterion was satisfied because it did not address exceptional or extraordinary circumstances that apply to the property. The applicable criterion is:

**17.74.110. Conditions for Granting Variance.** A variance may be granted only in the event that the following circumstances substantially exist:

- A. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape legally existing prior to the date of the ordinance codified in this title, topography, or other circumstance over which the applicant has no control;

The applicant has subsequently submitted additional testimony regarding these two criteria, in a July 1, 2021 e-mail (**Attachment 1**) and a July 6, 2021 e-mail (**Attachment 2**).

**Discussion:**

In considering the issues associated with this variance request, it is helpful to understand the purpose of the standard that the applicant is requesting a variance of (Section 17.53.100(C), as well as the unique circumstances of the property.

***Purpose of the Standard Limiting the Number of Lots Utilizing a Private Access Easement Instead of a Public Street***

The City’s Comprehensive Plan policies, and the land division standards in Chapter 17.53 of the Zoning Ordinance which implement the policies, establish requirements for a well-connected public street grid. Public street grids are critical city infrastructure providing a means of people and goods to travel freely throughout a community in several different forms of transportation – vehicular, pedestrian and bicycle. Public street standards are established to provide consistency and equity throughout the community. Public street grids also are designed to provide connectivity throughout the community with standards for maximum block length and perimeter. Dead-end streets are typically discouraged, but cul-de-sacs may be used when connectivity options are restricted. As a result, cul-de-sacs are allowed in limited situations. In addition, the land division standards allow for shared private accesses in limited circumstances where the property does not allow for public street construction and connectivity, such as access to flag lots or when a cul-de-sac is not the most efficient design. A cul-de-sac can be very land consumptive since it needs to be built within a full right-of-way with curbs and sidewalks and a bulb terminus to allow for a fire truck to turn around. When just serving a limited number of lots (for instance three or less), and the overall travel distance does not require a fire truck turn-around it does not make sense in terms of land efficiencies.

In addition, the land division standards generally discourage “through lots” where a lot has public street frontage on the front and back side. This can be inefficient, because it means those lots require the equivalent of a full street with utilities (half on the front and half on the back), whereas a typical lot only requires a half-street along the frontage, with a “double loaded street.”

In summary, the access priorities are (in order of priority):

- Through-street connectivity, with maximum block length and perimeter (which may be restricted adjacent to major streets)
- Limited dead end street/s: Public cul-de-sac or private easement access
- Flag lot access

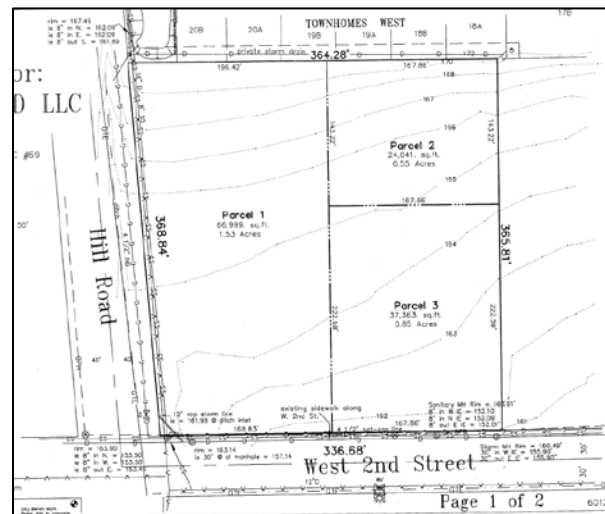
*Note: There is also an option for a private street serving more than four lots which can only be approved in a subdivision as part of a Planned Development. A private street must be built to specified standards.*

A municipality wants to be very careful and thoughtful about how often and when a cul-de-sac or private access easement is allowed in order to ensure that the majority of the city is developed under the first priority of street connectivity. Many cities will develop maximum thresholds of allowance for the number of lots that can access a private easement instead of a public street. In McMinnville's case, that maximum threshold has been established as three lots. (MMC Section 17.53.100(C)(1))

However, there are unique circumstances when a variance to that policy may be warranted, which is why there is the opportunity to apply for a variance to the code requirements for unique circumstances and/or properties.

**Subject Property - Background Information and Unique Circumstances**

The subject property is part of a commercial development with four buildings. Originally developed on one parcel with four buildings and an internal private circulation system, the property was partitioned into three parcels in 2004, partition 5-04. The three parcels share a single private access onto 2<sup>nd</sup> Street, which was originally the driveway of the initial development. Parcel 1 is currently a corner lot with frontage on 2<sup>nd</sup> Street and Hill Road, Parcel 3 has frontage on 2<sup>nd</sup> Street, and Parcel 2 has no public street frontage. (Please see below).



Theoretically, Parcel 1 could be further divided without the need for a variance to the standard limiting the number of parcels served by a private easement access if each of the new parcels has separate direct access onto Hill Road, or if there was one new access onto Hill Road shared by both of those parcels. That would mean only two parcels, Parcels 2 and 3, would rely on the existing access to 2<sup>nd</sup>



Street. However, Hill Road is a Minor Arterial in the city's transportation system and the City prefers to limit access to Hill Road in order to preserve its integrity as a minor arterial.



The potential access options available to the applicant to divide the property are:

- **Proposed Partition.** Partition with a variance to use the existing single private access point to 2<sup>nd</sup> Street that would continue to serve the existing development.
- **Alternative 1.** Partition and add direct access to Hill Road, also retaining the existing shared access easement to 2<sup>nd</sup> Street.
- **Alternative 2.** Partition with revised access that would replace private easement access with a public cul-de-sac, which would provide public street access to every lot. However, this would require the existing private access driveway to be built to public street standards with curbs which would require more land and likely would result in removal of parking spaces below required minimum requirements.
- **Alternative 3.** Partition and potentially adjust lot lines to create a flag lot configuration so some lots would have flag lots to 2<sup>nd</sup> Street and/or Hill Road rather than easement access across other properties. The flag lot approach is discouraged by the Zoning Ordinance.

Alternative 2 and Alternative 3 are not preferred options due to the non-conformities that it would create with other aspects of the zoning ordinance.

Alternative 1, which is the option to partition with direct access to Hill Road without the need for a variance to this standard, would result in additional access onto a minor arterial in relatively close proximity to the intersection, and would also result in additional driveway crossings across the bike

lanes. It would also allow for the existing shared access point to remain. 2<sup>nd</sup> Street and Hill Road are both minor arterials at this location. The Comprehensive Plan includes the following policies regarding access management on minor arterials:

- *Policy 120.00. The City of McMinnville may require limited and/or shared access points along major and minor arterials, in order to facilitate safe access flows.*
- *Policy 122.00. The City of McMinnville shall encourage the following provisions for each of the three functional road classifications:*
  1. *Major, minor arterials.*

*-Access should be controlled, especially on heavy traffic-generating developments.*

As noted in the Decision Document, the Goals and Policies of the Comprehensive Plan serve as criteria for land use decisions. Policies 120.00 and 122.00 were not directly addressed by the applicant or in the decision document, but should be considered as relevant in consideration of the additional information submitted by the applicant regarding the unique circumstances of the property in close proximity to 2<sup>nd</sup> Street and Hill Road.

With the additional information provided by the applicant, and in consideration of these policies as criteria, there is sufficient information to find that the applicable criteria are satisfied.

In addition, staff previously found that the applicant had not met the burden of proof to demonstrate use of a private access easement under the land division standards of Section 17.53.100(1) of the Zoning Ordinance. That finding has been revised in the decision document.

**Attachments:**

1. Updated Decision Document and Attachments

**Recommendation:**

Staff has reviewed the proposal for consistency with the applicable criteria. Absent any new evidence or findings to the contrary presented during the hearing, staff finds that, with the additional information submitted by the applicant, and considering that additional information together with additional criteria provided in Policies 120.00 and 122.00 of the Comprehensive Plan, that the applicable criteria are satisfied.

Staff recommends that the Planning Commission approve the variance.

**Suggested Motion:**

**I MOVE THAT THE PLANNING COMMISSION APPROVE THE VARIANCE APPLICATION VR 2-21.**